

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2967 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MADHUKAR VADILAL PARIKH

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioners - Absent.
MR L.R. POOJARI, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR VS PARIKH for Respondent No. 4 - Absent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 21/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

This matter was called out twice. No one appears on behalf of the petitioners even on second call. We heard the learned Assistant Government Pleader for the respondent No.1 and perused the entire record.

The petitioners have challenged the Constitutionality of the provisions of Sections 65 and 67 of the Gujarat Town Planning and Urban Development Act, 1976. They have also challenged the show cause notice dated 28th October, 1983 at Annexure "K" to the petition and the notice dated 31.5.1984 at Annexure "O" as well as the orders refusing permission.

A Division Bench of this Court in M.J. Babi Vs. Ahmedabad Municipality, reported in AIR 1975 (Guj.) 182, while consider the challenge against the provisions of the Bombay Town Planning Act, held that in view of the decisions of the Supreme Court mentioned in paragraph 17 of that judgement, it was not open to challenge the validity of any of the provisions of the Bombay Town Planning Act on the ground that it violates the fundamental rights of the petitioner. The Court held that once the validity of the Act as a whole was upheld after considering various provisions of the Act and taking into account both the procedural as well as substantive aspects, it cannot possibly be urged that validity of a particular Section is still open to challenge because it has not been specifically considered. In Maneklal Chhotalal Vs. M.G. Makwana, reported in AIR 1967 SC 1373, the Supreme Court while considering the provisions of Sections 32, 64 to 68, 26(2), 71 and 34 of the Bombay Town Planning Act, 1954 (as amended by the Gujarat Act, 52 of 1963) held that the Act imposes only reasonable restrictions on fundamental rights guaranteed under Article 19(1)(f) of the Constitution and was not discriminatory and violative of Article 14 of the Constitution of India. The declaration in context of the Bombay Town Planning Act about its validity will have force even as regards the impugned provisions of the Gujarat Act, because the object and purpose of the law is the same. We therefore do not find any substance in the contentions raised in the petition against the constitutionality of the provisions of Section 65 or 67 of the Act.

It is stated before us by the learned Assistant Government Pleader for the respondent No.1 that he has

been instructed by the concerned officer to state that during the pendency of this petition, a Town Planning Officer was appointed and a preliminary scheme was prepared, which did not affect the properties in question. Therefore, these notices which are challenged in the present petition did not survive. In this view of the matter, the grievance of the petitioner against the impugned notices and orders does not survive. This petition is therefore rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

*/Mohandas